

EXHIBIT TWO

William Fleming

04/09/2007

SUBJECT TO CONFIDENTIALITY AGREEMENT

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Volume: I

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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LISA RICCOBENE,

Plaintiff,

v.

MASSACHUSETTS BAY TRANSPORTATION

AUTHORITY, and ANNE McCALL,

Defendants.

----- X

DEPOSITION OF WILLIAM FLEMING

Monday April 9, 2007

9:58 a.m.

PRINCE, LOBEL, GLOVSKY & TYE, LLP

100 Cambridge Street, Ste. 2200

Boston, Massachusetts 02114

Reporter: Carol A. Pagliaro, CSR No. 23293

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1 A. I remember telling them that Lisa hadn't
2 returned to work since the Chief, that she had been
3 out on comp. time because she was being harassed, she
4 believed she was being harassed.

5 Q. Do you specifically recall telling them that
6 Lisa Riccobene believed she was being harassed?

7 A. Yes.

8 Q. Did you tell them whether or not you
9 believed Lisa Riccobene was being harassed?

10 A. It never came up.

11 Q. Did they ask you any questions about the
12 alleged harassment?

13 A. No.

14 Q. Did you tell them anything about whether or
15 when Ms. Riccobene planned to return from using her
16 comp. time?

17 A. I told them that she had told me on the
18 phone call she was leaving in January.

19 Q. What do you recall telling Joan Martin and
20 the others about the other civilian employees that
21 you were asked to report about?

22 A. The conversation, I remember they asked
23 about 2 employees, Tyrone Mungo and Delilah -- I
24 can't pronounce Delilah's last name, and what their

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1 did, and I think Sharon's name was before Lisa, and I
2 said I moved Sharon up from her position to assist
3 me, you know, as my assistant, which I think led into
4 the next -- I don't remember the exact sequence of
5 names, whether it was alphabetical order or how they
6 did it, and that led to the discussion.

7 Q. Do you recall saying anything derogatory
8 about any of the civilian employees on the list?

9 A. No.

10 Q. Do you recall telling Joan Martin and the
11 consultants that any of the other civilian employees
12 had less seniority than Ms. Riccobene?

13 A. I think I said Delilah and Tyrone, to my
14 recollection, had the least seniority.

15 Q. The 2 greeters?

16 A. Yes.

17 Q. At some point did you receive word to go to
18 10 Park Plaza for an announcement concerning a
19 layoff?

20 A. Yes. Well, I was called up to 10 Park
21 Plaza, but I wasn't told what the reason was.

22 Q. And do you recall when that occurred?

23 A. No.

24 Q. Do you recall how long after your meeting

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1 it was in December or something, but that was -- it
2 was a very short conversation.

3 Q. In response to Question Number 23 you were
4 asked, Do you know why these individuals were
5 selected for layoffs, and you respond, Not my
6 decision; is that right?

7 A. Correct.

8 Q. And Question Number 24, Did you participate
9 in the decision to lay off Lisa Riccobene, and you
10 responded, The decision was made by Human Resources.
11 We were handed a list. It was only Lisa. Is that
12 correct?

13 A. Yes.

14 Q. After having received the envelope at Park
15 Plaza with Lisa's name in it, did you then understand
16 whether your meeting with Joan Martin a month earlier
17 had been related to the layoff?

18 A. Yes, because I was talking to the other
19 managers in the room at the time.

20 Q. And what did they have to say about it?

21 A. They had talked about the previous meeting,
22 and then -- well, their main concern to me was, Billy
23 you have got to give us -- they had raised concerns
24 that, some of their employees, they wanted the police

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1 the one?

2 ATTY. NOTIS: Objection.

3 A. That's a tough question, because the
4 inference would be that I was somehow recommending
5 Lisa being laid off, and I never did that. I didn't
6 want to lose anybody.

7 Q. You didn't want anybody to be laid off?

8 A. No.

9 Q. Do you believe that Joan Martin retaliated
10 against Lisa Riccobene by including her in the
11 layoff?

12 ATTY. NOTIS: Objection.

13 A. I have no idea.

14 Q. Do you know who made the decision to put
15 Lisa Riccobene's name on that list of people to be
16 included in the layoff?

17 A. No.

18 Q. Do you believe Michael Mulhern retaliated
19 against Lisa Riccobene by including her in the
20 layoff?

21 A. I have no idea who put -- so I have no idea
22 whether -- who made the selections.

23 Q. Do you know whether Anne McCall had anything
24 to do with Lisa Riccobene's inclusion in the layoff?

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1 is leaving, so this had to be before Nadine left, and
2 I said, I'm short, I have to put Sharon up, because I
3 said Lisa is out on comp.

4 Q. But my question was, other than saying that
5 about Tom O'Loughlin, did you say anything other
6 about Tom O'Loughlin at that meeting?

7 A. I don't remember his name coming up.

8 Q. You said to him, you testified, you said
9 that Lisa Riccobene is ought on comp. as she believes
10 she is being harassed, correct?

11 A. Correct.

12 Q. Did he ask you about the harassment?

13 A. No.

14 Q. Did it surprise you he didn't ask about the
15 harassment?

16 A. No, because was it was more in line with
17 someone had come to me about Sharon getting bumped up
18 and --

19 Q. Wouldn't you expect the General Manager of
20 the MBTA to be concerned that some employee was out
21 of work because she felt she was being harassed?

22 ATTY. DRETHER: Objection.

23 A. I never gave it any thought. I don't talk
24 to the General Manager too often.

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1 employees.

2 Q. Let me ask you this, when did lieutenants
3 become unionized at the MBTA Police force?

4 A. A couple of years ago.

5 Q. Do you remember when that was?

6 A. The exact date I don't know.

7 Q. Do you know if they were unionized while you
8 were Chief?

9 A. I think that is when they became unionized.
10 I think they became unionized when Tom O'Loughlin was
11 here.

12 Q. Did you play any role in the decision to
13 select Lisa Riccobene for layoff?

14 A. No.

15 Q. Do you know who it was who selected Lisa
16 Riccobene for layoff?

17 A. No.

18 Q. And at the time Ms. Riccobene was laid off,
19 you were the Chief of the MBTA Police Department?

20 A. Yes.

21 Q. Were you ever asked who, in your opinion,
22 you thought should be laid off?

23 A. Because what we spoke about this morning,
24 the privileged, whatever you call it.

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1 Q. Let me rephrase that. During the time you
2 were Chief in the MBTA Police Department, were you
3 asked who you thought should be laid off if there had
4 to be layoffs?

5 A. No.

6 Q. Now, when you had that meeting with Joan
7 Martin and the consultants, according to your
8 testimony you said they were discussing Riccobene,
9 she is not back at work because she is on comp. time
10 because she claims she is being harassed, right?

11 A. Yes.

12 Q. Did Joan Martin ask you anything about that
13 harassment?

14 A. No, I think she said I knew about that, like
15 that.

16 Q. What is your understanding of Ms.
17 Riccobene's claim in this lawsuit?

18 ATTY. DRETHER: Objection.

19 A. That Lisa believes that she was treated
20 unfairly, I thought, in retaliation for her loyalty
21 to Tom O'Loughlin and because of her ethnicity,
22 because she is Italian.

23 Q. Do you know if her claims have anything to
24 do with allegedly being retaliated against for

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1 thing saying that the task force had recommended
2 those 2 positions, so...

3 Q. But in terms of -- well, again, did you
4 think it would have made more sense to lay one or
5 both of them off than Ms. Riccobene?

6 ATTY. DRETHER: Objection.

7 A. With the political climate at the time, to
8 have eliminated those 2 positions would have, I
9 think, would have been clearly a broadside to the
10 task force that we were not complying with some of
11 their recommendations.

12 Q. Other than possibly being contrary to task
13 force recommendations, other than that, would it have
14 made more sense, in your opinion, to lay one or both
15 of those people off than Ms. Riccobene?

16 ATTY. DRETHER: Objection.

17 A. I never understood the reason for the
18 positions.

19 Q. Well, again, would it, in your opinion --

20 A. Yes.

21 Q. At the time it would made more sense to lay
22 off one of them than Ms. Riccobene?

23 A. The position of greeter, yes.

24 Q. In your opinion at the time were there any